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emergency.¹² However great may be the merits of our theory of the separation of powers, our constitutions do not and can not carry it out in every detail.

The third question was answered by the majority in the negative. It must be admitted that the effort in this respect was labored. The dissenting judges were more successful on this than on the other points. They make the "reasons" stated by the legislature appear extremely weak, if not even ridiculous.

Dissenting opinions render a valuable service to the law and to the community. We are now well accustomed to judicial disagreement and to five to four (or four to three) decisions on constitutional matters of high importance. Nevertheless, a mild regret may be expressed when judicial opinions are in violent disharmony, "like sweet bells jangled, out of tune and harsh."

DAYLIGHT SAVING LAWS

The repeal of the Federal Daylight Saving Law¹ has occasioned such conflicting local regulations that the resulting exasperation may present an interesting legal question. "Daylight saving" has an unfortunately varying effect upon the welfare of different classes and occupations.² A blessing to the confined office worker, it is anathema to his brother on the farm. It is thus very largely a local question, even though our industrial organization is so complex that a change in the setting of John Clerk's alarm clock sometimes causes a change in the hour of Tom Farmer's rising. The preponderance of urban or rural voters may settle the state policy in the matter; and no court would deny the validity of a state law without such extreme oppressiveness in application as to invite general non-compliance with its terms.³ If convenient to the general public, its constitutionality may be assumed.⁴

¹² It has been argued that to permit the legislature to determine the existence of its own power to prevent a referendum is to nullify the provision for a referendum altogether. This is too strong a statement. A court is often required to determine the existence of its own jurisdictional power by a determination of the operative facts upon which that power depends.

¹ Act of Aug. 20, 1919 (41 Stat. at L. 280).

² See *Daylight Saving—A Brief for Debate* (1917) 90 THE INDEPENDENT, 249, collecting references to various views; see also Boston Chamber of Commerce, *Report of Special Committee on Daylight Saving* (1917).

³ The statutes so far passed may be put into three classes: First, those which established daylight saving time throughout the state. Such a statute has been passed in Massachusetts. Mass. Acts, 1921, ch. 145. Second, those providing for local option, the state of New York alone having passed such a law. N. Y. Laws, 1921, ch. 70. Third, those forbidding the observance of any other than the regular standard of time. Connecticut, Vermont, and New Hampshire have passed such laws. Conn. Pub. Acts, 1921, ch. 37; Vt. Laws, 1921, No. 261; N. H. Laws, 1921, ch. 15. Similar legislation is pending in the legislatures of Rhode Island and Kentucky.

⁴ See *Commonwealth v. Nolan* (1920) 189 Ky. 34, 224 S. W. 506. To illustrate:

Individual cities are more likely than are the states to pass such ordinances,⁵ due to municipal pressure and to the hostility of the "farm bloc" in the state legislature. In the absence of both a prohibitory statute and a state daylight saving law, the constitutionality of these city ordinances is not questionable.⁶ Where a state law has been passed, however, even without a prohibition of "local option" in the matter, the inconsistency of a municipal ordinance would seem to make it impossible to sustain.⁷ The Supreme Court of Ohio upheld such a measure⁸ under the "home rule" provision of the state constitution,⁹ holding that the ordinance was applicable to purely municipal affairs and neatly dodging any reference to the obvious intent of the city council to nullify the state law within the limits of the city. Without such a constitutional sanction, however, the decision should have been to the contrary.¹⁰ If a determined legislature has expressly forbidden local daylight saving, the situation ensuing upon a city's defiance¹¹ is more interesting from the standpoint of administration than from that of constitutionality.¹²

New York's local option laws might have resulted in confusion by reason of the differing actions of the various cities and towns. Could it be denied that if the legislature believed that the great majority of the people of the state would be greatly benefited by such a law, it could not require all to conform to a new standard of time? On public convenience as a valid ground for the exercise of the police power, see *Lake Shore, etc. Ry. v. Ohio* (1899) 173 U. S. 285, 19 Sup. Ct. 465; *State v. Wilson* (1917) 101 Kan. 789, 168 Pac. 679; *Sabre v. Rutland Ry.* (1913) 86 Vt. 347, 85 Atl. 693.

⁵ Among the many cities that have adopted the Daylight Saving Plan the ordinances of the following have been examined: Columbus, Ohio, Ord. No. 31, 924, Mar. 6, 1920; Cincinnati, Ohio, Ord. No. 75, 1920; Providence, R. I., Ord. No. 212, ch. 285, 1921; Hartford, Conn., Ord. No. 454, 1920; Pittsburgh, Pa., Ord. No. 420, 1919; Philadelphia, Pa.; Buffalo, N. Y.; Newark, N. J.; Jersey City, N. J.; Chicago, Ill.; New York City.

⁶ "The enactment of this ordinance is immediately necessary for the preservation of the public health." (Ordinance of City of Buffalo, N. Y.) See also the preamble of those of Jersey City, Pittsburgh, and Philadelphia. 2 Dillon, *Municipal Corporations* (5th ed. 1911) secs. 591, 592.

⁷ 1 Dillon, *op. cit.* sec. 237; 2 *ibid.* sec. 601. Cooley, *Constitutional Limitations* (7th ed. 1903) 278, 279; *City of St. Louis v. Ameln* (1911) 235 Mo. 669, 139 S. W. 249.

⁸ *State, ex. rel. Cist, v. City of Cincinnati* (1920) 101 Ohio St. 354, 129 N. E. 595.

⁹ Ohio Const. art. 18, sec. 3. State law covering time regulation, Ohio Gen. Code, 1921, secs. 5979, 5980.

¹⁰ See *supra* note 7. *Ex parte Daniel* (1921, Calif.) 192 Pac. 442.

¹¹ The City of Hartford, Conn., adopted daylight saving in 1921 despite the state law, *supra* note 3.

¹² "Municipal corporations are mere instrumentalities of the state for the more convenient administration of local government. Their powers are such as the legislature may confer and they may be enlarged, abridged or entirely withdrawn at its pleasure," per Waite, C. J., in *Meriwether v. Garrett* (1880) 102 U. S. 472. See also, 1 Dillon, *op. cit.* sec. 98; *Chalstran v. Bd. of Education*

From a conscious fear of either legislative or judicial interference,¹³ the city framers of such ordinances usually have been careful to limit their mandatory operation to municipal departments,¹⁴ adding a pious wish that others may feel inclined to make their clocks agree with the one on the town hall.¹⁵ A very recent ordinance has cast aside such precatory prudence, and commands obedience.¹⁶ If it is indicative of a new tendency, the courts will soon be compelled to review a question that needs to be answered with certainty, if only because of the disastrous effect of the present chaos upon daily commercial dealing.

(1910) 244 Ill. 470, 91 N. E. 712; *Pershing County v. Sixth Judicial Dist. Court* (1919, Nev.) 183 Pac. 314.

¹³ A resolution declaring that: "The City of Hartford is and is hereby declared to be in a state of rebellion against the laws of the United States and the laws of the State of Connecticut in regard to standard time," was rejected. Laws of The House, Conn. Assembly, April 20, 1921. A bill offered as a substitute and providing penalties for such violation by municipalities was also rejected. Laws of the House, April 28, 1921.

¹⁴ The ordinance of the City of Buffalo, N. Y., is typical. After declaring the new standard of time, the concluding requirement is that, "all courts, public offices, and legal and official proceedings shall be regulated hereby."

¹⁵ The Chicago, Ill. ordinance reflects this attitude. Section 3 reads: "All persons residing within the city and all persons, firms or corporations doing business within the city are hereby *requested* to set and run any and all clocks. . . . in accordance with the official time."

¹⁶ "That in order to promote uniformity and to secure to the citizens and inhabitants of the City of Philadelphia the benefits of daylight saving in the said months . . . such standard of time *is hereby designated to be conformed to by the said citizens and inhabitants* by setting forward and retarding their watches, clocks and timepieces at the times and in the manner provided for in the first section hereof, and by governing themselves in their daily business and affairs in accordance with the standard of time fixed by this ordinance." Ordinance of Philadelphia, sec. 3, approved March 2, 1922.